

Claims 31-32, 44-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker et al.

Baker et al disclose a method for processing grain. The process comprises the steps of precooking grain by a low moisture process, preconditioning by hydrating to a total moisture content of 10-40% in a ribbon blender or a preconditioning cylinder, extruding the hydrated material, cutting the extruded material with a rotating knife, drying the cut extrudate and grinding the product. The ground product may be agglomerated by feeding into an agglomerator and adding water and/or steam and/or a binder such as starch, modified starch, gum. The agglomerated product is then dried to a moisture content of about 5-15%. The precooked material may be ground and provided as flour, granules, flakes, pieces or a blend of the three. ( see col. 3)

Baker et al do not disclose the size of the agglomerates and the grains or tuber as in claim 44.

It would have been obvious to classify the agglomerate to size and to select any varying sizes depending on the intended use and the texture wanted. Baker et al teach the final particle size may be adjusted to optimize water uptake, finished product viscosity and organoleptic qualities. It would have been an obvious matter of preference to select any type of grain material including wheat flour, corn flour, potato flour etc.. depending on the taste and flavor desired. The determination of patentability of product-by-process is based on the product itself, not on how the product is obtained. Baker et al disclose modified flour.

Claims 1,3-6,8-17,22,24-25,33-41 are free of prior art because applicant's argument is persuasive with respect to the method claims. The differences in processing steps do not determine the patentability of product-by-process claims as explained in the rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

October 21, 2009

/Lien T Tran/

Primary Examiner, Art Unit 1794